

REMARKS

The present Amendment is in response to the Official Action dated August 21, 2007. Claim 26 has been amended. Claims 1-25, 27-30, and 37 were previously cancelled. Therefore, claims 26, 31-36, and 38 remain pending in the present application. Applicant's remarks relating to the pending claims and the outstanding Action are set forth below.

In the Action, the Examiner objected to the abstract of the disclosure because it did not meet the 50-150 word requirement and was not a brief and concise description of what Applicants feel is novel. Applicants have set forth amendments to the originally filed abstract in the present amendment. Applicants have added a section detailing the method being claimed in the present application. The addition of this section overcomes the objection of the abstract, but is not to be taken in any way as a narrowing of the scope of the present invention.

Further in the Action, the Examiner rejected claims 26, 31-36, and 38 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0016633 to Lin et al. ("Lin"). In short, it is the Examiner's position that each and every one of rejected claims 26, 31-36, and 38 is obvious in view of the prior art noted above.

Claim 26 of the present application recites a method of making an implant comprising cutting a portion of calcaneus bone into a plurality of cross sections and cutting each cross section to provide two or more subsections. As the above-amendment makes clear, the cutting of the calcaneus bone yields one or more implants each comprised of both cortical and cancellous bone from the calcaneus.

The Examiner stated in the Action that Lin discloses making a spacer from bone harvested from the calcaneus. This statement is not entirely true. Paragraph [0032] of Lin states

that "[b]ody 12 is formed from dense *cancellous* human or animal bone which may be harvested from a bone such as a tibia, humerus, patella, *calcaneus* or femur." (emphasis added) Lin thusly teaches a spacer that may include *cancellous calcaneus* bone. Lin further states in paragraph [0042] that a spacer "can be formed by cutting U-shaped portion 610 from a *cortical* ring 650 which may be cut from a long bone, e.g, femur, tibia, fibula, ulna or radius." (emphasis added) Notably, the exemplary list of bones in paragraph [0042] ("cortical list") is different from the exemplary list of bones in paragraph [0032] ("cancellous list"). Lin clearly contemplated using the cortical portion of certain bones set forth in the cancellous list because Lin included both the tibia and femur on each list. However, Lin disclosed the use of the calcaneus in the cancellous list, but not in the cortical list. Such was a purposeful omission. Thus, it follows that Lin does not teach the use of cortical calcaneus, but rather teaches away from such use.

Claim 26 of the present application has been amended herein to recite more clearly that both the cortical and cancellous portions of the implant are harvested from the calcaneus. Given that Lin teaches away from the use of cortical calcaneus, Applicants respectfully submit that independent claim 26, as amended, is allowable over the prior art cited by the Examiner. Given that dependent claims 31-36 and 38 properly depend from claim 26, such claims also necessarily overcome the prior art. Therefore, Applicants respectfully request allowance of each and every one of current claims 26, 31-36, and 38.

Finally, because of the finality of the outstanding Action, the present amendment is being submitted along with a Request for Continued Examination. Accordingly, the Examiner is requested to remove the finality of the Action and enter the present amendment.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

Kevin M. Kocun

Registration No.: 54,230

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicant

ABSTRACT

Lumbar and thoracic spinal implants comprised of substantially cancellous bone and calcaneus are disclosed. The graft lumbar and thoracic spinal implants have sufficient load bearing capacity to withstand the loads of the lumbar and thoracic spine. Methods of creating such implants are also disclosed. One particular method includes cutting a portion of the calcaneus from a donor in a size and shape for insertion between two vertebral bodies, and cutting the portion to provide two or more subsections to provide an implant for use in a transforaminal lumbar interbody fusion or posterior interbody lumbar fusion, each implant including a thin layer of cortical calcaneus bone formed integral and partially surrounding a core of cancellous calcaneus bone.